

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 PACIFIC BELLS, LLC, et al.,

8 Plaintiffs,

9 v.

10 JAY INSLEE, in his capacity as
Governor of the State of Washington,
et al.,

11 Defendants.

C21-1515 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable
13 Thomas S. Zilly, United States District Judge:

14 (1) Having reviewed defendants' opposition, docket no. 36, the Court
15 STRIKES without prejudice plaintiffs' motion for leave to amend, docket no. 20. The
original complaint, docket no. 1, remains the operative pleading.

16 (2) The Court will not rule on the motions to intervene, docket nos. 24 and 30,
brought by Service Employees International Union Local 775, the Puget Sound
17 Advocates for Retirement Action, and AARP (formerly known as the American
Association of Retired Persons), until after it decides defendants' pending motion to
18 dismiss, docket no. 17. At the hearing set for April 1, 2022, only counsel for the current
parties to this matter will be permitted to address the Court.

19 (3) On or before 9:00 a.m. on Thursday, March 31, 2022, the parties shall file
20 supplemental briefs, not to exceed five (5) pages in length, addressing the following
issues:

21 (a) which party bears the burden of establishing the number of
22 individuals against whom Long-Term Services and Supports Trust Program
(also known as "WA Cares") premiums will be assessed;

1 (b) how many individuals are (i) anticipated to be subject to WA Cares
2 premiums on or after July 1, 2023; (ii) expected to be exempt as of July 1, 2023;
3 (iii) have already applied or are expected to apply for exemption from the
4 assessment of WA Cares premiums for each of the potential reasons set forth in
RCW Chapter 50B.04 and Laws of 2022, ch. 2, § 2; (iv) self-employed in
Washington; and (v) predicted to elect coverage pursuant to RCW 50B.04.090;

5 (c) whether, in light of Laws of 2022, ch. 2, § 2, the claims of plaintiff
6 Melissa Johnston, who resides in Eagle Point, Oregon, but apparently works in
Washington, and who is now eligible for an exemption from WA Cares premiums,
should be dismissed with prejudice for lack of standing and/or on the merits; and

7 (d) whether WA Cares meets the definition of an “employee benefit
8 plan,” as defined by the Employee Retirement Income Security Act; see 29 U.S.C.
§§ 1002(1)–(3) (requiring that an “employee benefit plan” be “established or
9 maintained by an employer or by an employee organization or by both”); see also
29 U.S.C. §§ 1002(4)&(5) (defining “employer” and “employee organization”).

10 (4) At oral argument on April 1, 2022, counsel should be prepared to focus on
whether WA Cares premiums are taxes for purposes of the Tax Injunction Act and
11 whether “a plain, speedy and efficient remedy may be had” in state court. 28 U.S.C.
§ 1341.

12 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
13 record.

14 Dated this 29th day of March, 2022.

15 Ravi Subramanian
16 Clerk

17 s/Gail Glass
Deputy Clerk